

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF MISSISSIPPI
EASTERN DIVISION

KAYLA CLARK, ADMINISTRATRIX AND
ON BEHALF OF ALL HEIRS AT LAW AND
WRONGFUL DEATH BENEFICIARIES
OF JONATHAN SANDERS, DECEASED

PLAINTIFFS

V.

CIVIL ACTION NO. 2:16-CV-101-KS-MTP

KEVIN HERRINGTON, IN HIS OFFICIAL AND
PERSONAL CAPACITIES; CITY OF STONEWALL;
STONEWALL POLICE DEPARTMENT; BOARD OF
ALDERMEN IN THE OFFICIAL CAPACITIES;
AND JOHN DOES 1-10

DEFENDANTS

**MOTION TO REQUIRE SPECIFIC REPLY TO DEFENDANTS' QUALIFIED
IMMUNITY DEFENSES AND TO CONTINUE AUTOMATIC STAY OF
LITIGATION ON BEHALF OF ALL DEFENDANTS**

COME NOW, Defendants, Kevin Herrington, in his official and personal capacities,
Town of Stonewall, Stonewall Police Department, and Board of Aldermen in their Official
Capacities ("Defendants"), through counsel, and file this their Motion to Require Specific Reply
to Defendants' Immunity Defenses and to Continue the Automatic Stay of Discovery, as follows:

1. Plaintiff has asserted federal claims pursuant to 42 U.S.C. § 1983, against the
Defendants. Plaintiff has also asserted various state law claims. Plaintiff has sued the
Defendants in both their individual and official capacities and seeks a monetary judgment against
them. The Complaint only contains conclusory legal allegations and does not allege with
particularity (or otherwise) the necessary facts underlying the allegations against the individual
Defendant Kevin Herrington, or any other named Defendant.

2. On August 19, 2016, Defendants filed their Answer and Defenses in which they
raised qualified immunity and exemption defenses to all of Plaintiff's federal law claims.

Additionally, with regard to Plaintiff's state law claims, in their Answer and Defenses Defendants also raised various immunity and exemption defenses pursuant to Miss. Code Ann. § 11-46-1 *et seq.*. Subsequently on September 21, 2016, and prior to the filing of the instant Motion, Defendants filed a Motion to Dismiss the Complaint pursuant to the qualified immunity and exemption defenses which were raised in the Answer. After filing this Motion to Dismiss, Defendants sent to the Magistrate Judge a Proposed Order Staying Discovery in the case, pursuant to L.U.Civ.R. 16(b)(3)(c). The Order Staying Discovery and Disclosure Requirements, as well as cancelling the case management conference was entered by the Court on September 26, 2016.

3. In accordance with *Schultea v. Wood*, 47 F.3d 1427 (5th Cir. 1995), Defendants are entitled to an Order directing Plaintiff to file a specific reply setting forth with particularity those specific facts which, if true, would **overcome** the Defendants' state and federal qualified immunity defenses.

4. Further, to vindicate a government entity or official's immunity from suit, discovery should continue to be stayed until Plaintiff provides a specific reply with facts which, if true, would **overcome** the Defendants' state and federal qualified immunity defenses, and the Court has an opportunity to rule on the Defendants' Motion to Dismiss.

5. The automatic stay of proceedings should remain in effect with regard to **all Defendants** and all discovery at least until these threshold issues of immunity and exemption are determined by the Court.

6. In support of this Motion, Defendants rely upon and fully incorporate herein their Memorandum in Support of this Motion.

THIS, the 27th day of September, 2016.

Respectfully submitted,

CITY OF STONEWALL

BY: /s/ James C. "Cory" Griffin
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CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing document with the Clerk of the Court using the ECF system which sent notification of such filing to the following:

Toney A. Baldwin
BALDWIN & BALDWIN, PLLC
P. O. Box 3199
Jackson, MS 39207

This the 27th day of September, 2016.

/s/ James C. "Cory" Griffin
James C. "Cory" Griffin